

Part 2

General Provisions

77-32-201 Definitions.

For the purposes of this chapter:

- (1) "Board" means the Indigent Defense Funds Board created in Section 77-32-401.
- (2) "Commission" means the Utah Indigent Defense Commission created in Section 77-32-801.
- (3) "Compelling reason" shall include one or more of the following circumstances relating to the contracting attorney:
 - (a) a conflict of interest;
 - (b) the contracting attorney does not have sufficient expertise to provide an effective defense of the indigent; or
 - (c) the legal defense is insufficient or lacks expertise to provide a complete defense.
- (4) "Defense resources" means a competent investigator, expert witness, scientific or medical testing, or other appropriate means necessary, for an effective defense of an indigent, but does not include legal counsel.
- (5) "Defense services provider" means a legal aid association, legal defender's office, regional legal defense association, law firm, attorney, or attorneys contracting with a county or municipality to provide legal defense and includes any combination of counties or municipalities to provide regional indigent criminal defense services.
- (6) "Effective representation" means legal representation consistent with the Sixth Amendment to the United States Constitution, and Utah Constitution, Article I, Section 12, as interpreted through federal and Utah state appellate courts.
- (7) "Indigent" means a person qualifying as an indigent under indigency standards established in Part 3, Counsel for Indigents.
- (8) "Indigent criminal defense services" means the provision of a defense services provider and defense resources to a defendant who is:
 - (a) being prosecuted or sentenced for a crime for which the defendant may be incarcerated upon conviction, beginning with the defendant's initial appearance in court to answer to the criminal charge; and
 - (b) determined to be indigent under Section 77-32-202.
- (9) "Indigent criminal defense system" means:
 - (a) indigent criminal defense services provided by local units of government, including counties, cities, and towns funded by state and local government; or
 - (b) indigent criminal defense services provided by regional legal defense funded by state and local government.
- (10) "Legal aid association" means a nonprofit defense association or society that provides legal defense for indigent defendants.
- (11) "Legal defender's office" means a division of county government created and authorized by the county legislative body to provide legal representation in criminal matters to indigent defendants.
- (12) "Legal defense" means to:
 - (a) provide defense counsel for each indigent who faces the potential deprivation of the indigent's liberty;
 - (b) afford timely representation by defense counsel;
 - (c) provide the defense resources necessary for a complete defense;
 - (d) assure undivided loyalty of defense counsel to the client;

- (e) provide a first appeal of right; and
- (f) prosecute other remedies before or after a conviction, considered by defense counsel to be in the interest of justice except for other and subsequent discretionary appeals or discretionary writ proceedings.
- (13) "Local funding" includes funding by an indigent criminal defense system for defense services. Local funding may be adjusted annually to reflect population growth and inflation for consideration of state funding for indigent criminal defense resources and critical need indigent criminal defense providers.
- (14) "Participating county" means a county that has complied with the provisions of this chapter for participation in the Indigent Aggravated Murder Defense Trust Fund as provided in Sections 77-32-602 and 77-32-603 or the Indigent Felony Defense Trust Fund as provided in Sections 77-32-702 and 77-32-703.
- (15) "Regional legal defense" means a defense services provider which provides legal defense to any combination of counties or municipalities through an interlocal cooperation agreement pursuant to Title 11, Chapter 13, Interlocal Cooperation Act, and Subsection 77-32-306(3).
- (16) "Serious offense" means a felony or capital felony.
- (17) "State funding" means funding by the state for:
 - (a) the establishment of a statewide indigent criminal defense data collection system;
 - (b) defense resources; and
 - (c) critical need defense services providers.
- (18) "Shared state and local funding" means the recognition of the state's constitutional responsibility for the provision of indigent defense services and the collaborative assistance by indigent criminal defense systems to fairly provide effective representation in the state, consistent with the safeguards of the United States Constitution, the Utah Constitution, and this chapter.

Amended by Chapter 177, 2016 General Session

77-32-202 Procedure for determination of indigency -- Standards.

- (1) A determination of indigency or continuing indigency of any defendant may be made by the court at any stage of the proceedings.
- (2)
 - (a) Any defendant claiming indigency who is charged with a crime the penalty of which is a class A misdemeanor or serious offense shall file with the court a fully complete affidavit verified by a notary or other person authorized by law to administer an oath and file a copy of that affidavit with the prosecuting entity. The affidavit shall contain the factual information required in this section and by the court.
 - (b) A defendant claiming indigency who is charged with a crime the penalty of which is less than a class A misdemeanor is not required to comply with the requirements of Subsection (2)(a) and Subsection (4).
- (3)
 - (a) "Indigency" means that a person:
 - (i) does not have sufficient income, assets, credit, or other means to provide for the payment of legal counsel and all other necessary expenses of representation without depriving that person or the family of that person of food, shelter, clothing, and other necessities; or
 - (ii) has an income level at or below 150% of the United States poverty level as defined by the most recently revised poverty income guidelines published by the United States Department of Health and Human Services; and

- (iii) has not transferred or otherwise disposed of any assets since the commission of the offense with the intent of establishing eligibility for the appointment of counsel under this chapter.
- (b) In making a determination of indigency, the court shall consider:
 - (i) the probable expense and burden of defending the case;
 - (ii) the ownership of, or any interest in, any tangible or intangible personal property or real property, or reasonable expectancy of any such interest;
 - (iii) the amounts of debts owned by the defendant or that might reasonably be incurred by the defendant because of illness or other needs within the defendant's family;
 - (iv) number, ages, and relationships of any dependents;
 - (v) the reasonableness of fees and expenses charged to the defendant by the defendant's attorney and the scope of representation undertaken where the defendant is represented by privately retained defense counsel; and
 - (vi) other factors considered relevant by the court.
- (4)
 - (a) Upon making a finding of indigence, the court shall enter the findings on the record and enter an order assigning a defense services provider to represent the defendant in the case.
 - (b) Upon finding indigence when the defendant has privately retained counsel, the court, subject to Section 77-32-303, shall enter the findings into the record and issue an order directing the county or municipality to coordinate the providing of defense resources as appropriate.
 - (c) The clerk of the court shall send a copy of the affidavit and order to the prosecutor and to the county clerk or municipal recorder.
- (5) If the county or municipality providing the defense services provider has any objections to or concerns with the finding of indigency and assignment of a defense services provider or the continuing of indigency status and assignment of a defense services provider, it shall file notice with the court and a hearing shall be scheduled to review the findings and give the county or municipality the opportunity to present evidence and arguments as to the reasons the finding of indigency should be reversed and the court shall proceed as provided in Section 77-32-302.
- (6)
 - (a) If the trial court finds within one year after the determination of indigency that any defendant was erroneously or improperly determined to be indigent, the county or municipality may proceed against that defendant for the reasonable value of the services rendered to the defendant, including all costs paid by the county or municipality in providing the legal defense.
 - (b) Subsection (6)(a) does not affect any restitution required of the defendant by the court pursuant to Chapter 32a, Defense Costs.
 - (c) A defendant claiming indigency has a continuing duty to inform the court of any material changes or change in circumstances that may affect the determination of his eligibility for indigency.
 - (d) Any person who intentionally or knowingly makes a material false statement or omits a material fact in an affidavit for indigency is guilty of a class B misdemeanor.

Amended by Chapter 245, 2013 General Session